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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,480	08/22/2003	Tomoyuki Iwanaga	03560.003345	8722
5514	7590	09/15/2006	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112				ROY, ANURADHA
ART UNIT		PAPER NUMBER		
3736				

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/645,480 Examiner Anuradha Roy	IWANAGA, TOMOYUKI Art Unit 3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 07 July 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1,4,6-9 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,4,6-9 and 17-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### **Claim Rejections - 35 USC § 112, Paragraph Two**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term “adapted to” directed to the control means of the noncontact tonometer has not been positively recited. The Applicant should amend the claim to positively recite those limitations.

### **Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 6, 7 & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Hayafuji (US Patent No. 5,634,463).

In regards to claim 1, Hayafuji discloses a noncontact tonometer comprising:

fluid blowing means (10-12) for blowing fluid onto a cornea to deform the cornea;

measuring-light projecting means (Column 2, lines 60-67) for projecting measuring light onto the cornea;

corneal deformation detecting means (2) for detecting the measuring light reflected by the cornea when the cornea is deformed by the fluid so as to have a predetermined curvature radius;

calculating means (Column 4, lines 8-11) for calculating intraocular pressure on the basis of the detection by the corneal deformation detecting means; and

control means (Column 5, lines 25-26) for controlling a measuring operation of the noncontact tonometer; and

a comparing means (3) for comparing of the intraocular pressure obtained by the calculating means with a predetermined limit,

wherein the control gives a warning if the intraocular pressure obtained by the calculating means exceeds the predetermined limit (Column 3, lines 62-66).

Regarding claim 4, Hayafuji discloses a noncontact tonometer, wherein the control means is fully capable of performing a continuous measuring operation and also capable of stopping the continuous measuring operation depending on the comparison by the comparing means (Column 2, lines 15-19 & Column 3, line 62 – Column 4, line 11).

With regard to claim 5, Hayafuji discloses a noncontact tonometer, wherein the control means is fully capable of adding a predetermined number of measurements depending on the comparison by the comparing means (Column 6, lines 15-17).

Regarding claim 6, Hayafuji discloses a noncontact tonometer, wherein the control means comprises notifying means for notifying an operator of the comparison by

the comparing means (Column 3, lines 62-66).

In regards to claim 7, Hayafuji discloses a noncontact tonometer, wherein the fluid blowing means comprises fluid control means for controlling the force of the fluid blown onto the cornea for varying the force of the blown fluid depending on the comparison by the comparing means (Column 2, lines 20-27).

In regards to claim 17, Hayafuji discloses noncontact tonometer comprising:

fluid blowing means (10-12) for blowing fluid onto a cornea to deform the cornea;  
measuring-light projecting means (Column 2, lines 60-67) for projecting measuring light onto the cornea;  
corneal deformation detecting means (2) for detecting the measuring light reflected by the cornea when the cornea is deformed by the fluid so as to have a predetermined curvature radius;

calculating means (Column 4, lines 8-11) for calculating intraocular pressure on the basis of the detection by the corneal deformation detecting means; and

control means (Column 5, lines 25-26) for controlling a measuring operation of the noncontact tonometer so as to measure right and left eyes sequentially a predetermined number of times, respectively (Examiner contends the operator could control the control means manually to measure the right and left eyes sequentially.);  
and

a comparing means (3) for comparing of the intraocular pressure obtained by the calculating means with a predetermined limit,

wherein the control means stops the measuring operation after completion of the predetermined number of measurements of the eyes under measurement if the intraocular pressure obtained by the calculating means exceeds the predetermined limit (Column 3, line 62 – Column 4, line 11).

**Additional Claim Rejections - 35 USC § 103**

Claims 8 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayafuji in view of Kohayakawa (US Patent No. 6,131,574) and further in view of Miwa (US Patent No.5,946,073).

With respect to claims 8 & 9, Hayafuji discloses a noncontact tonometer, wherein the measuring operation comprises a solenoid (14) for driving, the corneal deformation detection means (2), and notifying means (Column 3, lines 62-66) for notifying the operator of the comparison by the comparing means. However, Hayafuji does not disclose a measuring operation comprising a pupil-position sensing means for alignment, corneal bright-point detection means for close alignment. Kohayakawa, however, discloses a pupil-position sensing means for alignment (Column 1, lines 34-39 & Column 4, lines 51-65). It would have been obvious to one having ordinary skill in the art at the time the invention in view of Kohayakawa to have a pupil position sensing means with Hayafuji in order to proper align the eye.

Futhermore, Miwa discloses a corneal bright-point detection means (Column 3, lines 46-55). It would have been obvious to one having ordinary skill in the art at the time the invention in view of Miwa to incorporate a corneal bright-point detection means with Hayafuji in order to further assist in alignment of the tononmeter with respect to the

examinee.

### **Allowable Subject Matter**

Claims 18-22 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 4-9, & 17 have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anuradha Roy whose telephone number is (571) 272-6169 and whose email address is anuradha.roy@uspto.gov. The examiner can normally be reached between 8:00am and 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business

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Center (EBC) at 866-217-9197 (toll-free).

~AR

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